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APPENDIX B

I

EXCERPT OF INSTRUCTIONS OF THE COURT

". . . .

The offense charged here is a common-law offense. By that we mean that it exists in law but is not defined or set forth in the statutes. To constitute a conspiracy there must exist an understanding or agreement by two or more persons to accomplish some criminal or unlawful purpose, or to accomplish some lawful purpose, not in itself criminal, by criminal or unlawful means. This is probably a good time for the Court to instruct you as a matter of law there is nothing illegal or unlawful about purchasing equities in real property as such. It is possible, however, to purchase equities or anything else by unlawful methods or means . . ."

As I said, the gist of the offense is the unlawful combination or agreement. In this case it is claimed by the prosecution that the two defendants combined and conspired together to commit the offense of obtaining the Lavrack property by the use of false pretenses. They are not charged with the actual commission of the offense, only with the conspiracy to commit it, and it is not necessary for the prosecution to show that the object of the conspiracy was actually accomplished. The prosecution is only required to establish beyond a reasonable doubt that the defendants combined and conspired together to commit the offense. It is not necessary to establish that the parties ever met together and entered into any formal agreement to commit the offense or that they expressly agreed in words

or in writing that they should do so. It is sufficient if you find that the defendants had an understanding or agreement, express or implied, or a mutual understanding to commit the offense, even though the exact details of the scheme were not fully agreed upon.

Persons planning to commit a criminal offense seldom confide their plans to others, and it is for this reason that proof of conspiracy generally consists of circumstantial evidence. It is not necessary, in order to warrant a conviction of the defendants, that the people establish that they met and arrived at a definite understanding as to how their unlawful plans were to be carried out. It is sufficient if the prosecution establishes to your satisfaction, that an understanding or agreement existed between the defendants, in relation to a common design to commit the offense as charged, and this fact may be deduced by you from all of the testimony in the case. This common design may be regarded as established, if you find the defendants were actually pursuing, in concert, the common design and purpose, under an understanding or agreement, express or implied that I mentioned heretofore.

I should further charge you as a matter of law it is not necessary to constitute the offense of conspiracy that any party be actually deceived or defrauded. The words "deceitfully, fraudulently, cheat and defraud" appear in the information, and perhaps the Court should say a word about them. They are generic terms that defy specific definition. They embrace most of the multifarious means human ingenuity can devise and which are resorted to by one individual to get advantage over another by false pretenses, and they include surprise, trick, cunning and other artifice. A false pretense may be defined as a representation of some present or existing fact or circumstance, including a past fact or circumstance, intended and calculated to mis-

lead, which is not true, and which is intended to induce some action.

"....

Now, there has been in this case evidence submitted of other similar acts of these respondents. You may not consider this evidence with respect to the offense charged here, to-wit, the conspiracy to cheat and defraud the Lavracks; they have no bearing on this particular charge. You may consider such evidence, however, of other similar acts only if it helps or may help or fail to help you in determining the truth or untruth of such matters as mistake, or the absence of mistake by the respondents, the existence of or the absence of plan, scheme or system in doing any material act, and in determining knowledge or lack of knowledge of either of the respondents where such matter is at issue, and in determining whether any material act alleged was intentional or accidental.

"....

APPENDIX B

II

RESPONDENTS CLOSING ARGUMENT TO THE JURY

MR. LEONARD: If the Court please, fortunately I have an opportunity to comment on Mr. Rubin's remarks. I have never heard so many misquotations of law and fact as Mr. Rubin placed before you. As far as the fact is concerned, you heard the evidence. I'm not too worried about that.

Mr. Rubin says that the Judge is going to tell you that

this was no crime of obtaining money under false pretenses, that these people were not cheated. That is not true. He will tell you to direct a verdict of not guilty on the first count because the People were unable to prove beyond the reasonable doubt that the defendants were guilty of the crime charged, not that they weren't cheated, just that we were unable to prove it, and he will tell you this by telling you to direct a verdict of not guilty. He is not going to tell you they were not cheated.

You know what is some what interesting to me to note that Mr. Rubin argued for about 50, 55 minutes, and 50 of those minutes he referred to the first count which he knew was not going to be considered in your deliberations, and about five minutes he talked about the conspiracy. What does this indicate? It indicates sympathy, confuse, delay, confuse, delay. This is his method of trying this case.

Let's put the shoe on the other foot. The Judge will ask you to direct a verdict of not guilty on the first count, but you'll see, and as you will probably know now, he is not going to ask you to direct a verdict on the second count. You are going to decide that count. So, why doesn't he talk about the count? Because he has nothing, nothing to rebut the evidence that was presented in this case along that count.

I might say that buying equities — and I agree wholeheartedly — is not unlawful. It is not a criminal act. Many people buy equities. There is nothing wrong with that; this is legitimate.

What is not legitimate is in obtaining these equities, obtaining this property, you make false statements in order to get them. This is what these defendants did. The proof indicates that, that there were false misrepresentations

made. We don't have to prove it. All we have to do is prove that they agreed to it. As I say, it doesn't have to be a formal writing of an agreement. All it has to be is an agreement, an agreement, meeting of the minds, and acquiescence, which was obvious in this case. These men did it to about ten people who took this stand — many of them before the Lavracks — therefore an agreement had been arrived at on how they were going to do it. Where that agreement occurred it is not certain, but there was an agreement. The facts indicate that. The testimony of the witnesses indicate that.

He talks about venue — another thing he throws in there. I won't talk to you about venue, maybe this will just confuse them a little. I'll just throw it out there. Let me say to Mr. Rubin that all ten of these people are from Genesee County and it is our contention that the agreement was made in Genesee County. That's what we have shown.

Now, he says, "Who was cheated?" Ladies and gentlemen of the jury, he says these two men were cheated. How naive does he think we are? They might be sharp, he says they might be sharp. I contend they are sharpies.

He refers to them as Robin Hood, giving his money away with his Friar Tuck, giving their money away. Can you really believe that? He misquotes the law on foreclosure; they have 18 months, it's a sure thing, it's a sure thing — it's a sure thing with these men. He is going to tell us how these people robbed Silverman and DeGillio, how the Lavracks got more than what they had in the house. I don't know whether he thought you people were asleep or not, but if you recall the testimony, they put a $100 down, they put $650 down, $700 into the house, they had made payments, they were up to date. They went out and

borrowed money to bring it up to date. Surely, surely after they were out of the house they would never go out and borrow money from a finance company for their last payment to bring it up to date if they knew what they were going to do, and that was to subject them to the, an $1,800 deficiency. The Federal Government is asking them to pay $1,800 *now* and Mr. Rubin says they came out better. Now, we know that isn't true, that's a false thing to say.

Now, Mr. Rubin in his opening statement says, "I'm going to prove that Mr. DeGillio was a member of the Teamsters Union." Then he says in closing, after we completely destroyed his evidence along those lines, "Don't think about that, it isn't important." What does it mean? What did we show with regard to the Teamsters? He was not a member. He was not a steward in the Teamsters Union making $176 a week at the time he made these representations to the Lavracks, at the time he made them to anyone of these people, has was not, and we proved that. I don't know what they think we have got here in Genesee County, a bunch of naive people, but these people go down and join the union and after the warrant is made he joins the union, he joins it in February, and the warrant is in January charging that, and he runs down there and joins as a steward, and you notice the official saying, "He made $169 or $170 a week." Did he think we wouldn't find that out? Surely he can't believe we are that naive — apparently he does. What does that indicate? It indicates he is covering. He is trying to cover. He says this house has no value. This house has value, it's worth $13,200.

He says these people didn't own this house. I submit — you saw the deed with their names on that title — they were the legal owners. They were legally responsible as that $1,800 liability indicates; not Mr. DeGillio or Mr. Silverman who made the money by renting the house,

no, the people that own the house, those are the people who are subject to the liability.

And of course, he always throws these insinuations in trying to imply something is there, "I'm going to say," or, "have something to do with Mr. Evans after this trial was over," like he has a right to do that. He has no right to do that. *He is just talking for your benefit.*

And he says, "Who got stuck?" Did DeGillio and Silverman really get stuck? He says, "If the Lavracks can't pay that $1,800, who is paying for it? The United States Government," the Uncle Sam he refers to, the taxpayers, while their two friends here enrich themselves, pad their pockets.

There was no comment by Mr. Rubin in regard to Mr. DeGillio's testimony of calling all these people a liar, not one bit of comment on that, not one comment by Mr. Rubin that Mr. Degillio was telling the truth and that all of these other people were lying. Now, he is brighter than that. He realizes that we are not that naive.

But what he says is, "You know how pat these stories were, everyone of them said the same thing," the implication being that maybe somebody told them that and that all ten of these people took the stand and committed perjury. Do you believe that? Or do you believe that maybe they are telling the truth and that they are telling the truth, that this did happen, because it was a plan. It was a scheme. It was a conspiracy. These people were telling the truth.

Then he says, "Isn't this the picture of an honest man," after Mr. Evans, the attorney says, "You ought to give back that deed," and these boys — these nice sharp business

men — march right down and give Mr. Evans back the deed not to the mortgage company like Mr. Rubin says, they gave it back to McCreedy, who was the original owner. Is this what a man who has done nothing wrong would do if he owns this property legally? No.

These guys didn't want any trouble. They had a good thing going for them.

He says Mr. Evans represents a mortgage company. He represents the Federal National Mortgage Association. It's a federal agency, and he says Mr. DeGillio was never — "here is a man with a clean record," therefore that makes him not guilty. That's immaterial. Mr. Dillinger — I think you had probably heard of him — Mr. Capone, the first time you heard of them I think they had a clean record. I think that's a fallacious argument.

Maybe he hasn't been caught before, maybe this is the first time he has done anything like that. But that should not relieve him of any responsibility.

And he says, "Why didn't the Lavracks go to Mr. Silverman and get their property back?" First, they don't even know where Mr. Silverman is and second — or, Mr. DeGillio. Second, that's easy to say now, real easy to say now, as though they would have gotten it back.

Our testimony indicated right from Mr. DeGillio's lips himself, he has about five or six different addresses. What for? So they can't keep track of him.

I disagree that every business man is sharp. I'd want to give them the benefit of the doubt. These boys had the benefit of a doubt too long. They have been doing this for three years by their own admission.

Mr. DeGillio says, "We maybe have about a hundred homes." What do they rent those homes for? $75? They are brand new homes. Now, remember "75", 100 dollars per month, they have 18 months. 18 months to collect that money and make $1,400. $1,800 while they have possession of this property. What did they pay, $100 to $500 for an equity. What's their property in a situation like that? From a $1,000 to $1,700 a home. Who got cheated? Who was cheated and what happens? They come out with between a $1,000 and $1,700 profit and the people who own the home, their credit is ruined. They are subject to deficiencies by the Federal Government. They may not be able to buy another home on F H A or G I. What do these witnesses say? "If we knew these things were happening, I sure wouldn't have sold it to them. Why, why should they want to subject themselves to civil liability later on? It's obvious.

Another thing, these people, one of them said, "I could have lived in that house myself for 18 months. I'm entitled to do that, the law says I'm entitled to do that rent free." They got money to go out and buy another house, from these defendants, $200 down and then they end up with a $2,000 deficiency; that's a good deal — for them.

They also — and DeGillio and Silverman were aware of this, could have deeded back if they wanted to get out from under the house, they could have deeded it back to FANNIE MAE and avoided any deficiency because these boys wouldn't have told them that, because they knew that that's what these people wanted to avoid, the deficiency, of losing their credit. And if they told them that they could deed back to FANNIE MAE and be relieved of all liability the people would have done it. That's what they wanted to avoid. What's $100 when there is a $2,000 or $3,000 deficiency looking you in the face? They wanted to get out

and that's the way they could have gotten out. But they wouldn't tell them that because they wouldn't have that money in their pockets.

Rubin, Mr. Rubin apparently criticizes the type of life or the type of situation these kids find themselves, young people starting out with married life, an opportunity to buy a home, small down payment, they are working, $75, $85 a week, they are making three or four kids, someone, some sick. These people, these people are entitled to live in a home that they own. They are entitled to a better thing than being cheated out of their home and being left to pay an enormous deficiency, enormous to these people. How do these people raise a $1,000, $2,000 or $3,000? How do they raise that? They don't.

In the opening statement Mr. Rubin says that his clients are working people. We submit they are cheats. They are scavengers, they are parasites. Who do they go after? The people that least, can least afford it, people just starting out. The creed of a cheat is to lie, to defraud, misrepresent. Do they do these things? Look at the testimony. We submit they do.

The evidence is unequivocal on those lines. It shows absolutely that they lied, they defrauded, they misrepresented; they are cheats.

What are some of the things that indicate fraud with these men, real quickly? First I mentioned he joins the Teamsters in February trying to cover on the information or complaint and warrant. He has got five or six different addresses. He puts the deed in his name alone. Mr. Silverman collects the rent. Why do they do that? They misrepresent when the people are signing the papers and tell these people that "You are relieved of all further

responsibility under the mortgage when you sign these papers;" that's the misrepresentation. We don't claim that by them saying "We'll make the payments in the future," that that's a misrepresentation we rely on; it's the fact that when they came in and told these people, "These papers relieve you of all responsibility under the mortgage," that was false. They knew it was false. These people relied on that.

Then there was talk about this assumption of risk paper. You know who always ends up with that? DeGillio and Silverman took it, "We'll send it in." It was never sent in. No testimony that any of that was ever sent in because it wasn't. They never intended to send it in. This is an indication that they meant to misrepresent, make the people think they were assuming the mortgage. These people don't know what that means. They don't realize that you have to get another mortgage and pay off yours before you are released of all liability, and this other mortgage should run to DeGillio, that's the only way they could be released of liability.

His own testimony on the stand indicates what kind of a person he is. You remember when Joan Curtis testified? She says, "I called him a crook."

"What was his reaction?" I ask.

"He laughed." These guys arrogant crooks. They think it's great to be a crook, to cheat people.

MR. RUBIN: Your Honor, I don't like to interrupt but I don't think that's proper rebuttal.

THE COURT: No, I think it's —

MR. RUBIN: I ask that that be stricken as inflamma-

tory, prejudicial. The jury should be instructed to disregard it.

THE COURT: All right, I'll instruct them to strike it from their minds.

MR. LEONARD: I apologize. I didn't realize I was restricted that much, I'm sorry, your Honor.

All we ask in this case is that you consider this fact that there was an agreement to commit a conspiracy. Whether that conspiracy was carried out or not is not really the important thing. We showed the witnesses, we showed by witnesses' testimony that there must be an agreement. There had to be an agreement because all ten of them say, "They told us, they told us that these papers would relieve us of all responsibility under the mortgage." This is what I'm saying, this is the crime, the fact that they had agreed, the fact that they had agreed to defraud these people, to cheat and defraud these people.

The witnesses indicated that it was more than coincidence, it was a plan. You can see to it, ladies and gentlemen of the jury, that these people, these innocent people get what they deserve, what they are entitled to, by seeing to it that they get what they deserve, and that's a verdict of guilty of conspiracy to cheat and defraud.

Let your verdict stand for the proposition that we, the uncheated at this time, anyway, will not allow the people who are susceptible to being cheated be taken. People can come into our community and do something like that.

Ladies and gentlemen of the jury, I don't want to take anymore of your time. I think that you are aware of the facts and the Court will instruct you on the law.

Consider carefully what we have said. We don't say buying equities is illegal. We say agreements with, as to two defendants made to buy equities by misrepresentation is unlawful, is a criminal offense, is conspiracy to cheat and defraud.

I hereby certify that the above is a true and correct transcript of the testimony and proceedings in the above entitled cause and the whole thereof on the above date.

Walter E. Gane—Court Reporter
7th Judicial District
Genesee County Courthouse
Flint, Michigan

I hereby certify that the above is a true record of the proceedings had in the above cause.

Donn D. Parker.
Circuit Court Judge